

In the Matter of )  
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Re-examination of Roaming Obligations ) WT Docket 05-265  
Of Commercial Mobile Services Providers )

Corr begins its analysis with the simple proposition that mobile broadband data services will, within 5 -7 years, become as widely distributed and as widely used as cell phones are today. Already cell phone companies are having to add 2.5 G and 3 G capabilities to their cellular and PCS networks, straining the capacity of those networks to provide the desired services. As wired broadband internet access becomes universal – a longtime policy goal of the Congress and the Commission – the public will come to expect and demand ubiquitous mobile broadband internet access as well. Increasingly, today's cell phone will become tomorrow's mobile

internet access device, with voice communications being only a small, though necessary, component of the overall service offering. What would have seemed futuristic fantasy twenty years ago will be an everyday reality in this decade.

Assuming that the telecommunications market structure in the United States remains as is, with a multiplicity of service providers of widely differing sizes offering service in different geographical regions, the need for automatic broadband data roaming will be just as, if not more, compelling than the current need for automatic voice roaming. Consumers will continue to sign up for service with their local carriers who, inevitably, will not provide service everywhere the consumer travels. Yet, accustomed as he is to ubiquitous cellular roaming, the customer will absolutely expect and demand that he be able to use his computer-phone wherever he goes. Indeed, because even voice communications will probably be entirely VoIP-based, unless this requirement is extended to internet applications, even the simple voice communications which are now subject to automatic roaming rules might be in jeopardy. For example, certain push-to-talk systems now making their way into the market use GPRS technology for voice communication rather than traditional voice channels. Absent a broader automatic roaming mandate, a non-home system could reject such calls even if the system was perfectly capable handling them because the service might not be deemed a two-way switched service interconnected with the PSTN. Yet to the customer the difference would be indiscernible and utterly perplexing.

All of this is just a way of saying that ubiquitous broadband roaming will be a practical necessity: the public simply will not tolerate anything less than full roaming capability wherever they travel. The Commission therefore needs to figure out a way to make that happen. There are two potential obstacles, one technical and one legal, neither of which are insurmountable.

As the Commission recognized in the Further Notice of Proposed Rulemaking, broadband data interconnection can take many potential forms and is also a heavier user of capacity than voice. This “problem” is no different than the current situation where different carriers use differing protocols such as GSM, TDMA and CDMA. Obviously, if the roamed-upon network is not configured to handle whatever broadband or data protocol the roamer is using, it cannot be expected to provide roaming service. We expect, however, that broadband protocols, as with voice, will resolve themselves into relatively few options, at least one of which will normally be available from one carrier or another in any given locale. We also expect that carriers will have strong incentives to configure their systems not to exclude many categories of users by adopting idiosyncratic data protocols. In other words, the broadband roaming system would work much as it does now – roaming will be required where it is technically compatible with the roamer and not required where it is not. Similarly, carriers will have strong incentives to design their networks in such a way that broadband usage is properly monitored and regulated, whether by economic means (charging higher prices for greater bandwidth use and duration) or by limiting the amounts of time and bandwidth that any customer can

use. Whatever method is used, carriers will have to apply some sort of regulatory mechanism to their own customers, not just to roamers. And because home users will impose a much greater burden on network capacity than roamers, whatever system works for home customers should control roamer usage as well. In other words, the technical issue will resolve itself as part of the process of expanding mobile broadband service generally, not just to roamers.

The regulatory issue is more interesting. The Commission recognized that, having defined mobile broadband as an “information service,” it cannot willy-nilly apply the common-carrier-based strictures of Title II to such a service. There are two solutions to that problem. The most forthright and straightforward approach, in Corr’s view, is to fundamentally revamp the Commission’s present system of classification of information and telecommunications services. The distinctions the Commission has drawn in recent years, while necessary to preserve the relatively regulation-free nature of the internet, are increasingly leading not only to strained results but also result in unfair treatment of seemingly identical or nearly identical service offerings. For example, why is a call placed over Skype not subject to international Section 214 authority, not subject to universal service contributions, and not subject to Title II, while a functionally identical call placed over Corr or AT&T is subject to all of the regulations? It is difficult to see why an e-mail or text message does not qualify as “the transmission between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information received,” i.e., “telecommunications,” which is offered to

the public for a fee, i.e., a “telecommunications service.” These services are no more “integrated” with the underlying telecommunications function in the mind of the consumer than the transmission of normal voice calls over the PSTN, yet the latter are, and always have been, deemed to be telecommunications services. The more finely the FCC splits the “information service” hair, the harder it is to distinguish those services realistically from telecommunications services. And that process will become even harder as more and more telecommunications traffic becomes IP-based. The current definitional system is no longer intellectually honest.

The better course would be to broadly re-categorize most current “information services” (other than those few relics which originally were thought to actually belong in that category like voice mail or electronic publishing) as telecommunications services; it could then regulate them with the degree of regulation appropriate to each particular service. For many services, like e-mail, the Commission could forbear from *all* regulation under the forbearance provisions of Title II. For other services it could lightly regulate, preserving only E-911, CALEA and other public safety-related elements of regulation as necessary, but doing so with a solid statutory Title II ground to stand on. It could also impose USF obligations even-handedly on all carriers of whatever ilk, whether internet-based or not, eliminating the present unfair and distortive disparity of treatment. This approach would create an honest, uniform and consistent regulatory paradigm which everyone could live with since the substance of regulation would probably not change but the statutory and regulatory underpinnings would be better grounded.

It would also give the Commission the regulatory flexibility, as with the matter at hand here, to impose appropriate Title II requirements when the public interest clearly demands it without having to do regulatory somersaults.

The other alternative is to go ahead and perform the acrobatics required by the current designation of mobile broadband access as an information service. The Commission has already concluded in many contexts that it has the ancillary authority under Title I to impose Title II-like regulation on non-telecommunications services where the public interests so requires. See, for example, the requirement that wireline broadband access providers contribute to the USF on an interim basis as though they were common carriers even though they are information services, *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd 14853, Para. 113 (2005) and the decision to extend disability access obligations to non-telecommunications services like voicemail, *Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment by Persons With Disabilities*, 16 FCC Rcd 6417, 6455 (1999). The Commission relied on its broad Title I powers to regulate the provision of “all interstate and international communication by wire or radio” regardless of the categorization thereof. That authority is certainly ample enough to embrace the provision of broadband data services, even if on a non-telecommunications carrier basis. Here, of course, virtually all of the broadband data services for which automatic roaming would be required will be or are being provided over licensed

Title III stations.<sup>1</sup> Because the Commission has plenary authority over Title III radio stations, there is no doubt that it has the authority to require broadband roaming over those stations, much as it currently requires analog operations by cellular carriers (Section 22.901(b) of the rules) and hearing-aid compatibility by CMRS carriers (Section 20.19). The Commission's authority to mandate automatic roaming therefore rests solidly on at least two pillars of the Act.

For these reasons, Corr urges the Commission to take the next important step necessary to move the country forward into an era where access to broadband data is ubiquitously available to users wherever they may roam.

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<sup>1</sup> The exception would be unlicensed operations such as WISPs operating in the 2.4 and 5.7 GHz bands.